

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of:

Mauna Kea Broadcasting Company

Must-Carry Complaint Regarding
Television Station KLEI(DT),
Kailua-Kona, Hawaii

CSR-8658-M

Docket No. MB-12-167 J111 12 2012

FILED/ACCEPTED

Federal Communications Commission
Office of the Secretary

To: The Secretary
Attn: Chief, Media Bureau

OPPOSITION TO MUST CARRY COMPLAINT

Time Warner Entertainment Company, L.P., d/b/a Oceanic Time Warner Cable

("TWC"), by its attorneys, and pursuant to Section 76.7 of the Commission's rules,¹ hereby submits this Opposition to the Must Carry Complaint ("Complaint") of Mauna Kea Broadcasting Company, licensee of KLEI-TV ("KLEI"), Kailua-Kona, HI. KLEI is not entitled to carriage on TWC's cable systems serving communities in the counties of Honolulu, Kauai, Kalawao, and Maui because KLEI cannot properly be found to provide local service to any of the communities in these areas.²

The Honolulu, HI Designated Market Area ("DMA") covers the entire State of Hawaii, including numerous islands spanning hundreds of miles with expanses of the Pacific Ocean

¹ 47 C.F.R. § 76.7.

² Honolulu County is comprised largely of the island of Oahu; Kauai County is comprised of the islands of Kauai, Kaula, Lehua, and Nihau; Kalawao County consists of the Kalaupapa Peninsula on the island of Molokai; Maui County includes all of the islands of Maui, Lanai, and Molokini in addition to the remainder of the island of Molokai. TWC provides cable service to communities in each of these four counties.

geographically separating the islands. TWC's systems serve each of the state's five counties, Hawaii, Honolulu, Kauai, Kalawao, and Maui.³ KLEI is currently carried only on TWC's headend located on the western portion of the island of Hawaii, where KLEI is located. While the Complaint does not specifically list the areas in the Honolulu DMA where KLEI is requesting carriage, TWC assumes those areas are Honolulu, Kauai, Kalawao, and Maui Counties and the remainder of Hawaii County.

Concurrently with this Opposition, TWC is filing a Petition for Special Relief ("Petition") to exclude the communities served by TWC's systems in Honolulu, Kauai, Kalawao, and Maui Counties from the Designated Market Area of KLEI on the basis that KLEI is not local to those systems or the communities they serve. As explained in detail in the Petition, the cable systems serving Honolulu, Kauai, Kalawao, and Maui Counties have not historically carried KLEI; KLEI's digital equivalent Grade B contour does not reach Honolulu, Kauai, Kalawao, or Maui Counties nor does the station have a presence there; and KLEI's schedule is bereft of programming that focuses on local issues and events in the communities located in those counties.

Pursuant to FCC rules, the status quo with regard to carriage of KLEI on TWC's systems must be maintained while the Petition is pending.⁴ Furthermore, since grant of this Petition would largely moot the Complaint,⁵ TWC respectfully requests that the Commission decide both

³ Hawaii County is comprised of the island of Hawaii.

⁴ See Must Carry and Retransmission Consent, 8 FCC Rcd 2965, ¶ 46 (1993).

⁵ TWC has no objection to carrying KLEI in the remainder of Hawaii County so long as KLEI fulfills its obligation under 47 C.F.R. § 76.61(a) to provide a good quality signal to TWC's headend located in the eastern part of Hawaii County.

proceedings together, consistent with standard Commission practice in such cases.⁶

TWC notes that the Complaint concedes that KLEI does not currently provide a good quality signal, as required by Section 76.61(a) of the Commission's rules, 47 C.F.R. § 76.61(a), to the areas where KLEI is currently not carried. In the event that KLEI's Complaint is granted, in whole or in part, the Commission must confirm that it is KLEI's obligation to provide the equipment necessary to deliver a good quality signal to the TWC headends that serve Honolulu, Kauai, Kalawao, and Maui Counties as a prerequisite to carriage by TWC, at KLEI's sole cost and expense.

To the extent that KLEI is granted carriage on any TWC system prior to December 12, 2012 as a result of this proceeding, TWC requests that the Commission hold that TWC may fulfill any such carriage obligations by carrying KLEI solely in digital format while providing, where necessary, equipment for free or at low cost, consistent with the Commission's Fifth Report in Order in CS Docket 98-120.⁷ In the Fifth Report and Order, the FCC determined that requiring hybrid cable systems to carry must carry signals in analog and digital format is not in the public interest. The Commission found such dual carriage is an inefficient use of cable operators' limited bandwidth and that allowing carriage of must carry stations solely in digital format, where the cable operator provides the necessary equipment for free or at low cost, would not disadvantage broadcasters or cable customers.⁸ To allow for a "smooth transition" away

⁶ See, e.g., Frontier, A Citizens Communications Company, 18 FCC Rcd 9589 (MB 2003), recon. denied, 19 FCC Rcd 15439 (MB 2004); Adelphia Cable Partners, L.P. d/b/a Adelphia Cable Communications, 16 FCC Rcd 5328 (CSB 2001), recon. denied, 16 FCC Rcd 21508 (2001).

⁷ Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules, 77 Fed. Reg. 36178, CS Docket 98-120, FCC 12-59 (rel. June 12, 2012) ("Fifth Report and Order").

⁸ See id. at ¶¶ 11, 15-16. Indeed, the FCC found that eliminating a dual carriage requirement would result in significant consumer benefits, as cable operators could use bandwidth previously

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from hybrid cable system carriage of both analog and digital formats, the Fifth Report and Order adopts a six-month transition period, thus requiring dual carriage until December 12, 2012.⁹ The purpose of this transition period is to enable cable operators to obtain the necessary equipment and provide enough advance notification to broadcasters and subscribers of any changes in service.¹⁰

To the extent KLEI is granted any additional carriage on TWC's systems, it should not be entitled to analog carriage during the transition period leading up to December 12. KLEI would not be prejudiced by a grant of only digital carriage since the station is not currently carried by the systems at issue and no lead time for notifications is necessary. Moreover, carriage of KLEI in analog format for a short time period would be an inefficient use of TWC's bandwidth and such short-term carriage would be likely to cause consumer confusion rather than abate it.¹¹

TWC respectfully requests that the Commission grant TWC's market modification petition with respect to KLEI and dismiss the Complaint with respect to Honolulu, Kauai, Kalawao, and Maui Counties.

being used to carry must carry signals in analog format to increase programming offerings and broadband capabilities. Id. at ¶ 16.

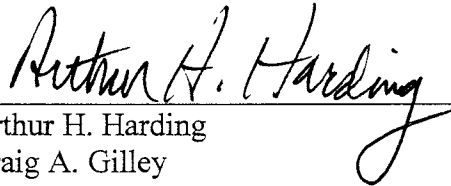
⁹ Id. at ¶ 17.

¹⁰ Id.

¹¹ If KLEI is granted carriage rights, depending on the timing of such a grant, it is possible that TWC would need to start notifying consumers that KLEI would no longer be carried in analog the day TWC began analog carriage of KLEI.

The undersigned certify that they have read the submission and to the best of their knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose.

Respectfully submitted,

A handwritten signature in cursive script, reading "Arthur H. Harding", written over a horizontal line.

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Dated: July 12, 2012

CERTIFICATE OF SERVICE

I, Glenda Thompson, a secretary at the law firm of Edwards Wildman Palmer LLP, hereby certify that copies of the foregoing "Opposition to Must Carry Complaint" were served this 12th day of July, 2012 via first-class mail, postage prepaid, upon the following:

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